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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN NELSON EDWARDS,

Defendant and Appellant.

2d Crim. No. B288451
(Super. Ct. No. 17PT-00451)
(San Luis Obispo County)

Brian Nelson Edwards appeals an order committing him to the California Department of State Hospitals as a mentally disordered offender (MDO). (Pen. Code, § 2962, et seq.)¹ He contends the evidence is insufficient to support the jury's finding that he suffers from a severe mental disorder that is not in remission or could not be kept in remission without treatment. (§ 2962, subd. (a)(1).) He also contends that an expert relied on certain medical records in violation of an in limine ruling, and

¹ All statutory references are to the Penal Code unless otherwise stated.

that his trial counsel rendered ineffective assistance when she did not object. We affirm.

BACKGROUND

Edwards was committed in 2006 to Atascadero State Hospital for treatment as an MDO. His qualifying offense was assault with force likely to cause great bodily injury. (§ 245, subd. (a)(1).) He hit a hospital staff member several times and pulled the hair of another, injuring her neck. He was conditionally released in 2016. His release was revoked in February 2017 when he became difficult to manage and expressed a belief that the phones at his board and care facility were “bugged.”

In May 2017, the People filed a petition to continue Edwards’s involuntary treatment pursuant to section 2970. Edwards requested a jury trial which was conducted in February 2018. The jury found that he has a severe mental disorder that is not in remission or cannot be kept in remission and that he represents a substantial danger of physical harm to others. The trial court ordered him to undergo treatment by the California Department of State Hospitals for an additional year.

Krista Soto, a staff psychologist at Patton State Hospital, testified that Edwards suffers from schizophrenia and meets all the MDO criteria. She based her opinion on her experience as a member of his treatment team, a personal interview, and review of his medical records and criminal and treatment history. She opined that although Edwards currently takes his medication, he is not in remission because he continues to demonstrate symptoms, including responding to internal stimuli and isolating from others. In their interview, he expressed a delusion that the telephones at his board and care facility were “bugged.”

Soto further opined that Edwards could not be kept in remission without treatment because he does not believe he has a mental illness, he engaged in violence other than self-defense within the last year, he does not attend any core treatment group sessions, and he has a history of noncompliance with medication. She opined that he is currently dangerous based on his lack of insight about his mental disorder, his history of noncompliance with medication and treatment, and his prior convictions in 1996 and 2004 involving assault.

Soto testified that remission is the absence of symptoms. She said the symptoms of schizophrenia include responding to internal stimuli (“a sign that someone is hearing voices”) and disorganized thinking. She said she had not personally observed Edwards responding to internal stimuli in the year before trial. But she reviewed a psychological assessment from August 2016 in which Patton State Hospital staff noted that Edwards, “stated, ‘I hear voices 3 or 4 times a month but I don’t talk back to them.’” She also reviewed a transfer note from September 2016 in which the social worker noted that Edwards “appeared to be responding to internal stimuli.”

Soto testified that Edwards engaged in violence other than self-defense in May of 2017 when another patient attacked him. She said, “in talking with Mr. Edwards, I also found out that not only did Mr. Edwards defend himself, but also after the other patient had fallen down he kicked the patient in the face when the patient was on the ground.”

Soto testified she took into account Edwards’s “noncompliance with treatment,” in reaching an “opinion about his dangerousness.” She said, “His noncompliance with medication, . . . also what we call core treatment groups was

concerning to me. Again, mental illness, the way to manage mental illness and also potential for violence is to be aware of it and find healthy ways to cope. And Mr. Edwards has continually refused to attend any groups that talk about mental illness, mental health, coping skills, and has opted for more of the leisure groups like weight training.”

Edwards testified that he is “not mentally ill.” He acknowledged that, “[a]t times I heard voices.” He said “being in the setting around people who hear voices, you know, things rub off and . . . it’s been on and off like maybe – maybe, you know, once or – once to maybe ten times a month where I would hear something”

Edwards said he will “probably” still take medication if released. He said he would seek out therapy, “[i]f I need it.” He said that he has “been going along and taking the medication, and then I get off the medication then somebody will pressure me or something like that.” He said that, since taking Latuda, “I don’t hear voices, I hear like noises that irritate me that might – you know what I’m saying?”; “You just hear like things faintly off in like [the] distance. You’ll hear like someone talk or something like that.”

Edwards described a time he thought his girlfriend was trying to poison him. He said that his conditional release was revoked because he had a cell phone, but he had been given permission to have a cell phone.

Regarding the violent incident, he said he was outside for “yard time,” when the other patient “swung” at him for no reason. “So I hit him and he fell and then he got up and he said, ‘No, wait a minute,’ and then he got up and came at me again. I hit him again, he fell. I ran to the other side. And, um, he started – he

got up and – he was on his way to get up again that’s when I kicked him.” Edwards said, “I was trying to get him to stay away from me,” “That’s the only thing that I could do to keep him away from me.”

Edwards’s testimony was disorganized. For example, he said, “. . . [Y]ou know, I been -- I got a lot of twist’in and turns in my life, and I just want it to end. Like, you know, because the world – the world is – is a scary place, and you know, I – I can’t save the world, but, you know, I just try to think about myself and keep myself above water”

The court instructed the jury that a disorder cannot be kept in remission without treatment if, in the past year, the person was in remission and was “physically violent except in self-defense,” among other things. The court did not define the term “self-defense” and no one asked it to do so. Defense counsel expressed agreement with the instructions as given.

DISCUSSION

The order for recommitment required proof that Edwards (1) has a severe mental disorder, (2) that is not in remission or cannot be kept in remission without treatment, (3) by reason of which he continues to represent a substantial risk of physical harm to others. (§ 2962, subd. (a)(1); *People v. Cobb* (2010) 48 Cal.4th 243, 252.) If a jury’s finding is supported by substantial evidence, we must accord it due deference. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) Substantial evidence supports the jury’s findings.

Mental Disorder

Edwards contends his severe mental disorder was not established by substantial evidence because Dr. Soto relied on the diagnosis of other medical professionals and did not personally

perform any test. He argues, “[a]nyone that can read, could take the stand and repeat.” Edwards did not raise a hearsay objection at trial. (*People v. Panah* (2005) 35 Cal.4th 395, 476 [hearsay received without objection at trial may constitute sufficient evidence to support a finding on review].) And “[p]sychiatrists, like other expert witnesses, are entitled to rely upon reliable hearsay, including the statements of the patient and other treating professionals, in forming their opinion concerning a patient’s mental state.” (*People v. Campos* (1995) 32 Cal.App.4th 304, 307-308.) Dr. Soto reviewed medical records including formal diagnostic testing results. She personally observed symptoms consistent with the diagnosis as a member of his treatment team and in a personal interview. Edwards’s disorganized testimony about hearing voices and poisoning lent further support to the diagnosis. There is substantial evidence he suffers from a mental disorder.

Remission

Edwards’s disorganized testimony supported Soto’s opinion that he was not in remission. Even if he was in remission, the evidence supports a finding he will not remain so without treatment because he does not acknowledge his mental illness, he refuses to participate in group sessions to learn to manage his illness, and he engaged in violence other than self-defense in the year before trial. “A reasonable person, whose mental disorder can be kept in remission with treatment, must, at minimum, acknowledge if possible the seriousness of his mental illness and cooperate in all the mandatory components of his treatment plan.” (*People v. Beeson* (2002) 99 Cal.App.4th 1395, 1399.)

Edwards contends there was not sufficient evidence that he is not in remission because Soto relied on two medical records

about his response to internal stimuli that were not themselves admitted into evidence or identified in the People's in limine motion. Edwards forfeited this claim when he did not object to Soto's testimony about the records. (*People v. Doolin* (2009) 45 Cal.4th 390, 434.) Counsel did not render ineffective assistance, because any objection would have properly been overruled. The records were of a kind reasonably relied on by experts in Soto's field regardless of their admissibility. Moreover, Soto's opinion that Edwards was not in remission was supported by her personal observations about his isolation and delusions and by Edwards's testimony.

Even if Edwards was not in remission, substantial evidence supported the jury's alternate finding that he cannot be kept in remission without treatment. "A person 'cannot be kept in remission without treatment'" if in the past year he either "has been physically violent, except in self-defense," or "has not voluntarily followed the treatment plan," among other things. (§ 2962, subd. (a)(3).) There is substantial evidence that Edwards was violent when he kicked another patient who was on the ground. There is also substantial evidence that he did not voluntarily follow his treatment plan because he had no insight about his mental disorder and did not participate in any mental health group sessions.

Edwards contends there is insufficient evidence that he engaged in violence other than self-defense, because the other patient initiated the violence and Edwards believed kicking him in the face was the only way to keep him away. But a reasonable jury could find that kicking his attacker's face after he was on the ground, rather than walking to another part of the yard or seeking out staff, was not necessary for self-defense. Proof that

Edwards committed a violent act in the last year was alone sufficient to establish he could not be kept in remission without treatment. (*People v. Burroughs* (2005) 131 Cal.App.4th 1401, 1407.)

Edwards's lack of attendance at group sessions also supported a finding he could not be kept in remission. "[B]y establishing that the defendant has failed to voluntarily follow his treatment plan, the People can show that defendant's mental disorder cannot be kept in remission without treatment." (*People v. Beeson, supra*, 99 Cal.App.4th at p. 1399.) Edwards points out that Soto did not expressly testify that group sessions were a mandatory component of his plan. He parses her testimony finely, pointing out that her remarks about "noncompliance" and refusal to attend "core treatment groups" was in connection with her dangerousness opinion, not her remission opinion. But her testimony was more than sufficient to support a finding that Edwards did not act as a reasonable person would in following his plan. "In determining if a person has voluntarily followed the treatment plan, the standard shall be whether the person has acted as a reasonable person would in following the treatment plan." (§ 2962, subd. (a)(3).) A reasonable jury could find it was unreasonable for Edwards to refuse to attend anything but leisure activities in preparation for release.

Dangerousness

The record supports a finding that Edwards presents a substantial danger of physical harm to others by reason of his disorder. Soto's professional opinion that he is currently dangerous, based on his violent history and his lack of insight, constitutes substantial evidence. (*People v. Ward* (1999) 71 Cal.App.4th 368, 373.) No proof of a recent overt act was

required. (§ 2962, subd. (g); *People v. Buffington* (1999) 74 Cal.App.4th 1149, 1161.)

Jury Instruction – Self Defense

Edwards contends the trial court should have instructed the jury sua sponte on the meaning of the term “self-defense.” We need not decide whether such an instruction is appropriate in an MDO proceeding, or whether the term is commonly understood by jurors, because any error is harmless in view of overwhelming evidence that Edwards cannot be kept in remission without treatment.

The trial court has a sua sponte duty to instruct on general principles of law relevant to the issues raised by the evidence. (*People v. Ramirez* (2015) 233 Cal.App.4th 940, 945.) That rule applies in MDO proceedings. (*People v. Collins* (1992) 10 Cal.App.4th 690, 694-695.) The court is not required to instruct on commonly understood terms absent a request. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1028 [“force” as used in § 261, subd. (a)(2)].)

Whether self-defense as used in section 2962 is commonly understood has not been decided in a published case but is immaterial here. Any error was harmless because the evidence was overwhelming that Edwards could not be kept in remission without treatment, both because he kicked a patient in the face who was lying on the ground and because he does not acknowledge his mental illness and did not act reasonably in following his treatment plan.

For the first time in his reply brief, Edwards argues the court should have given a unanimity instruction concerning the reason Edwards cannot be kept in remission: whether it is because he committed an act of violence other than self-defense

or because he failed to follow his treatment plan. Edwards forfeited the claim when he did not raise it in the trial court or in his opening brief. And even if such an instruction were required, which we do not decide, its absence would be harmless because Edwards's own testimony provides overwhelming evidence that he cannot be kept in remission without treatment.

DISPOSITION

The judgment (MDO recommitment order) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

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